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**WHY ARE OVER 98% OF THE APPLICATIONS FOR DEBT
DISCHARGE UNDER THE PUBLIC SERVICE LOAN FORGIVENESS
PROGRAM BEING DENIED?**

GREGORY SCOTT CRESPI*

ABSTRACT

On October 1, 2017, student loan borrowers who had taken out federal Direct Loans first became eligible for debt forgiveness under the Public Service Loan Forgiveness program after completing the required ten years of qualified public service employment. But as of March 31, 2020, over ninety-eight percent of the more than 188,000 applications for debt relief that had been filed and fully processed under this program have been denied. The later-adopted Temporary Expanded Public Service Loan Forgiveness program also has a strikingly high ninety-four percent plus denial rate for the over 29,000 applications for debt relief filed and processed as of that date.

This short Article considers the possible reasons for these bizarrely high denial rates and concludes that they are due in large part, though not entirely, to inadequate borrower outreach and assistance efforts by the Department of Education and its several loan servicers. Over the coming years, the proportion of debt relief applications approved under these programs will likely increase, hopefully rather dramatically. This is likely to happen because: (1) each year a somewhat larger proportion of outstanding federal student loans will be the Direct Loans that are eligible for discharge under these programs, rather than ineligible loans taken out under the earlier, and now-discontinued, Federal Family Education Loan program; (2) borrowers will surely become more aware over time of both the large benefits and specific requirements of these programs as they are more extensively publicized in the media; and (3) under the Biden Administration the Department of Education will almost certainly make more effective efforts to assist eligible borrowers to obtain debt forgiveness.

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INTRODUCTION

On October 1, 2017, borrowers first became eligible for tax-free forgiveness of their remaining federal Direct Loan student loan debts under the Public Service Loan Forgiveness program (“PSLF program”).¹ I have estimated that given the tens of millions of eligible governmental employees, and the millions of non-governmental employees who are engaged directly or indirectly in public service work,² eventually as many as 200,000 or more borrowers each year will obtain debt forgiveness under this program, costing taxpayers as much as \$12 billion to \$18 billion per year.³ However, these projections as to the eventual large scale and substantial costs of the program are called into question by the strikingly high rate at which the initial wave of applicants for debt forgiveness under the PSLF program over the first two-and-a-half years of borrower eligibility have been denied. But as I will discuss in some detail, both the number of applications filed annually and the approval rate for those applications are each likely to increase significantly over time, even though there are many factors involved that make forecasting the growth rates and eventually steady-state levels of both the number of applications and the number of approvals very difficult. However, the number of approvals will probably not approach the steady-state of over 200,000 approvals per year that I have estimated will eventually be reached until sometime between 2024 and 2028, several years later than I had projected in my earlier work.⁴

As of March 31, 2020, the Department of Education (“DOE”) had received 188,396 applications for debt forgiveness under the PSLF program over the first thirty months during which these applications could be filed.⁵ Of those

1. College Cost Reduction and Access Act, Pub. L. No. 110-84, § 401, 121 Stat. 784, 800 (2007) (codified as amended at 20 U.S.C. § 1087e(m) (2012)). There are several technical requirements for debt forgiveness eligibility under that program: the loans to be forgiven have to be federal Direct Loans; the person has to be enrolled in the 10-Year Standard Repayment Plan or in one of several income-based loan repayment Plans; the person has to have worked for at least ten years in a qualifying public service job since October 1, 2007; and the person has to have made all of the required loan repayments over that time period. *Id.*; see also *Public Service Loan Forgiveness (PSLF): Application for Forgiveness*, DEP’T OF EDUC. (expiration date 5/31/2020), <https://studentaid.ed.gov/sa/sites/default/files/public-service-application-for-forgiveness.pdf> [<https://perma.cc/N9XA-ZA9N>] [hereinafter PSLF Application for Forgiveness]. I will henceforth refer to the PSLF program as a “program,” as is conventional, even though technically it is not a separate program but just a set of eligibility criteria for obtaining debt forgiveness under one or another of several various federal student loan repayment Plans.

2. Gregory Crespi, *Could the Benefits of the Public Service Loan Forgiveness Program be Retroactively Curtailed?*, 51 CONN. L. REV. 625, 629, 630 (2019).

3. *Id.* at 629.

4. *Id.* at 629, 634.

5. See *Public Service Loan Forgiveness Data*, FED. STUDENT AID, <https://studentaid.ed.gov/data-center/student/loan-forgiveness/pslf-data> [<https://perma.cc/9FFM-MCL3>] (follow “March 2020 PSLF Report” hyperlink) [hereinafter March 31, 2020, PSLF Program Data]. That useful

applications, the large majority (174,495 applications) had their processing completed by that date.⁶ But of those fully processed applications, only 3,174—a minuscule 1.82% of those processed—had been approved by FedLoan Servicing (“FedLoan”), the DOE’s designated loan servicer for the PSLF program!⁷ In other words, over ninety-eight percent of the applications were denied. Seventy-three percent of the applications were denied by FedLoan for not meeting one or more of the program’s requirements, with most, but not all, of these denials resulting from an insufficient number of qualifying payments.⁸ Another twenty-three percent of the applications were denied for failing to provide complete information on the application.⁹

Such a shockingly high ninety-eight percent plus denial rate is difficult to understand especially because of how much is at stake for the applicants seeking forgiveness of often large remaining federal student loan debts.¹⁰ It is particularly surprising given that for slightly more than two-thirds of the voluntary annual requests made by borrowers since 2012—requesting that their employment be certified as qualifying public service employment—have been granted.¹¹ The majority of certification rejections are due simply to missing

DOE website also provides access to this same data aggregated as of the earlier dates of February 29, 2020, January 31, 2020, December 31, 2019, September 30, 2019, June 30, 2019, March 31, 2019, and pre-March, 2019. *See id.*

6. *Id.*

7. *Id.* Once a borrower files a PSLF Employment Certification Form, *see infra* note 11, or a PSLF Application for Forgiveness, *see supra* note 1, then the servicing of their loan is transferred over to FedLoan if that firm is not already their loan servicer.

8. *See* March 31, 2020, PSLF Program Data, *supra* note 5. Fifty-nine percent of the applications filed were denied due to an insufficient number of qualifying payments, and fourteen percent were denied because of ineligible loans. *Id.*

9. *Id.*

10. *See id.* Of the 3,174 applications for debt forgiveness that had been approved as of March 31, 2020, a total of 1,831 borrowers had their debts discharged, with a total dollar value of these discharges of \$116 million, an average of \$63,353 per borrower. *See also* Travis Hornsby, *Lawyers With Student Loans Are Worse Off Than Doctors*, STUDENT LOAN PLANNER (May 17, 2019), <https://www.studentloanplanner.com/lawyers-student-loans-worse-doctors/> [<https://perma.cc/TQZ3-TECV>]. For some borrowers, however, particularly law school or medical school graduates, the amount of discharged debt could easily exceed \$200,000. *Id.*

11. *See Public Service Loan Forgiveness (PSLF): Employment Certification Form*, DEP’T OF EDUC. (expiration date May 31, 2020), <https://studentaid.ed.gov/sa/sites/default/files/public-service-employment-certification-form.pdf> [<https://perma.cc/EQV6-XEL8>] [hereinafter PSLF Employment Certification Form]. The DOE has never made available to loan servicers or borrowers either a comprehensive list of qualifying employers or detailed employer qualification criteria. *Id.* The DOE did first make available in 2012 a short PSLF Employment Certification Form that borrowers can submit to FedLoan annually to have their current employment certified as qualifying. *Id.*; *see also* March 31, 2020, PSLF Program Data, *supra* note 5. As of March 31, 2020, of the 4,150,091 annual requests for certification that have been filed since 2012, 2,870,880 of them have been approved, approximately 69.2% of the requests, with only five percent of the denials being

information on the certification request form, rather than because of ineligible loans or ineligible employers (which very surprisingly was the reason given for only five percent of the rejections of employment certification).¹² Can it really be that over ninety-eight percent of the applicants either misunderstood the PSLF program eligibility requirements or were unable to properly complete the relatively short and straightforward application? Or is there some other reason for such a high rate of denials?

One possible partial explanation for such a strikingly high denial rate that I have considered was that the DOE was (and probably still is) directing FedLoan to impose two overlapping employer eligibility limitations on those non-governmental and non-501(c)(3) organization employers of persons who do public service jobs. First of all, those employers, to be eligible under DOE regulations, must be “public service organizations” as defined, thereby excluding for-profit employers, labor unions, and partisan political organizations as eligible employers, even employees who may be providing public service work for such employers. Second, in addition the “primary purpose” of employers must be to provide public service, rather than to provide such public service only in a manner ancillary to their primary organizational goals. In other words, an employee who provides otherwise qualifying public service for a for-profit entity, labor union, partisan political organization employer, or any non-governmental and non-501(c)(3) employer whose primary purpose is other than providing public service would not qualify for PSLF loan forgiveness under these DOE directives, despite the public service nature of their duties.

These two limitations taken together would appear to significantly narrow the class of employers that can offer qualifying public service jobs, and thus result in the denial of PSLF program debt relief to a significant number of otherwise qualified applicants. But neither of these limitations are expressly included in the statutes creating the PSLF program, and moreover, the “primary purpose” limitation was struck down in federal court in early-2019 as being “arbitrary and capricious” because of the DOE’s failure to comply with the Administrative Procedures Act requirements in directing FedLoan to impose that limitation.¹³ But as far as I am aware, FedLoan is apparently still applying both the “public service organization” limitation and the additional “primary

due to an ineligible employer rather than for another reason. March 31, 2020, PSLF Program Data, *supra* note 5.

12. March 31, 2020, PSLF Program Data, *supra* note 5.

13. *Am. Bar Ass’n v. U.S. Dep’t of Educ.*, 370 F.Supp.3d 1, 10 (D.D.C. 2019) (granting several of the [ABA]’s summary judgment motions on the basis that the “[DOE] acted arbitrarily and capriciously when the [DOE] changed its interpretation of the PSLF regulation in two ways,” including imposing the “primary purpose of the employer” limitation, “without displaying awareness of its changed position, providing a reasoned explanation for that decision, and taking into account the serious reliance interests affected.”).

purpose” limitation on eligible employers, as both the current PSLF Employment Certification Form and the PSLF Application for Forgiveness form indicate,¹⁴ even though the DOE, to my knowledge, has not yet adequately justified its “public service organization” regulation as being consistent with the enabling statute, nor addressed the serious procedural concerns raised by the “primary purpose” limitation that are noted in the invalidating court ruling.

I formerly suspected that the “public service organization” regulation and the now judicially-invalidated “primary purpose” limitation together might have been the basis for a significant number of the PSLF denials of applications, denials issued for applications that, in my opinion, should have been approved. However, the DOE, in its September 30, 2019 quarterly update of PSLF application data, stated that only two percent of the denied applications were denied due to the employer not being eligible.¹⁵ Only a portion of those ineligible employer denials were likely due to the failure of applicants to meet either the “public service organization” or “primary purpose” employer criteria. If this two-percent statistic is accurate, it suggests that these two arguably inappropriate limitations are not a major reason for the high denial rate. Importantly, however, it is not revealed by the DOE data how many additional borrowers, who may have otherwise met the PSLF statutory criteria for debt forgiveness, chose not to even file an application because they first reviewed the PSLF Employment Certification Form, the PSLF Application for Forgiveness form, or other DOE- or FedLoan-provided information, because the potential borrowers reasonably concluded that their application for debt relief would be denied simply due to the fact that at least one of their employers was a for-profit firm, labor union, or partisan political organization, and/or that at least one of their employers’ primary purpose was not providing public service. Such

14. See PSLF Application for Forgiveness, *supra* note 1, at Section 3, Question 13. The PSLF Application for Forgiveness indicates that despite the judicial condemnation of this criterion as arbitrary and capricious the DOE is still imposing a “primary purpose of the employer” limitation on non-governmental employers. *Id.*; see also *ABA v. DOE*, 370 F.Supp.3d at 10. I have seen no evidence that the DOE has since adequately addressed the concerns expressed in *ABA v. DOE* which struck down that limitation. *ABA v. DOE*, 370 F.Supp.3d at 10; see PSLF Application for Forgiveness, *supra* note 1, at Section 3, Questions 11, 12; PSLF Employment Certification Form, *supra* note 11, at Section 3, Questions 11, 12. Both of those forms also embody the “public service organization” exclusion of for-profit and partisan political organization employers. See PSLF Application for Forgiveness, *supra* note 1, at Section 3, Questions 11, 12; PSLF Employment Certification Form, *supra* note 11, at Section 3, Questions 11, 12.

15. See *Public Service Loan Forgiveness Data*, FED. STUDENT AID, <https://studentaid.ed.gov/data-center/student/loan-forgiveness/pslf-data> [<https://perma.cc/RBP4-HLMQ>] (follow “September 2019 PSLF Report” hyperlink) [hereinafter September 30, 2019, PSLF Program Data]. I am a little suspicious about this two percent figure given the large number of entities that have at least some of their employees providing qualifying public service work as their main duty, even though such public service is not the overall entity’s primary purpose. For example, the American Bar Association is one such entity. See *ABA v. DOE*, 370 F.Supp.3d at 13.

statutorily eligible, but thereby discouraged, persons should really be regarded as another group of de facto application denials, further reducing the effective borrower approval rates down towards one percent.

In late 2018, the DOE first revealed that as of June 30, 2018, approximately ninety-nine percent of the processed PSLF loan forgiveness applications had been denied.¹⁶ Partially in response to the adverse public reaction this information provoked,¹⁷ on October 16, 2018, a large number of Democratic members of Congress (35 Senators and 118 House members) sent DOE Secretary Betsy DeVos a very detailed request for information regarding the causes for denials of PSLF applications.¹⁸ That letter requested a response no later than November 27, 2018.¹⁹ However, in a manner that foreshadowed the Trump Administration's later announced blanket refusal policy with regard to all Congressional oversight requests for information and subpoenas, the DOE has not, as far as I am aware, formally responded to this letter, forcing Congress and the public to speculate as to the relative significance of possible explanations for this bizarrely high ninety-nine percent denial rate.²⁰ Moreover, that denial

16. See *Public Service Loan Forgiveness Data*, FED. STUDENT AID, <https://studentaid.ed.gov/data-center/student/loan-forgiveness/pslf-data> [<https://perma.cc/4C9L-JJ5X>] (follow "Pre-March 2019 PSLF Report" hyperlink) [hereinafter Pre-March 2019 PSLF Program Data]. A September 2018 General Accountability Office study had revealed earlier that as of April 30, 2018, FedLoan had fully processed 16,890 applications and had granted loan forgiveness to only fifty-five applicants, a 99.7% denial rate. See also *Public Service Loan Forgiveness: Education Needs to Provide Better Information for the Loan Servicer and Borrowers*, U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-18-547, at 11 (2018) [hereinafter GAO-18-547]. Those April 30, 2018, statistics, however, are not presented in the DOE's PSLF Program Data tables. See March 31, 2020, PSLF Program Data, *supra* note 5.

17. See, e.g., Stacy Cowley, *28,000 Public Servants Sought Student Loan Forgiveness. 96 Received It.*, N.Y. TIMES, Sept. 28, 2018, at B4.

18. See Letter to Betsy DeVos, Sec. of Educ. (Oct. 16, 2018), <https://www.warren.senate.gov/imo/media/doc/2018.10.16%20Letter%20to%20DeVos%20re%20poor%20implementation%20of%20the%20PSLF%20program.pdf> [<https://perma.cc/C8MZ-FBPH>] [hereinafter Letter to DeVos]. The Letter to DeVos, in its "PSLF Data Request Appendix," asked for very detailed information breaking down the application denials on a state-by-state basis, and with regard to the following possible reasons for denial: incomplete applications, ineligible employers, ineligible loan types, insufficient number of payments due to ineligible employment, insufficient number of qualifying payments, insufficient number of payments due to length of time in repayment, both for Direct Consolidation Loans and other loans, insufficient number of payments due to ineligible repayment plan, and ineligible number of payments due to non-timely payments. *Id.* at 7–10. That letter did not, however, inquire into the justifications for the restrictive "public service organization" regulation, nor question specifically whether a "primary purpose of the employer" limitation had been imposed to deny applications. *Id.* The letter also called for a breakdown of applicants by loan servicer, and also sought similar information regarding denials of applications for employment certification, and certain other related information. *Id.*

19. *Id.* at 2.

20. The DOE has, however, recently provided more information regarding the relative significance of the various reasons for denying applications, see March 31, 2020, PSLF Program

rate has not declined significantly since the release of June 20, 2018 applicant information but has instead remained at approximately ninety-eight percent plus as of March 31, 2020.²¹

In 2018, as another Congressional response to this strikingly high PSLF program denial rate, Congress approved the Temporary Expanded Public Service Loan Forgiveness program (“TEPSLF program”) which provides \$350 million for loan discharges for borrowers who had enrolled in a repayment plan that did not qualify for the PSLF program, but who otherwise qualified for PSLF program debt forgiveness.²² For fiscal year 2019, another \$350 million was added to the TEPSLF program, for a total of \$700 million available to qualified borrowers.²³ However, out of 29,728 applications for debt forgiveness under the TEPSLF program, as of March 31, 2020, only 1,768 of those applications had been approved—a denial rate of over ninety-four percent²⁴—for a program that relaxed one of the requirements of the PSLF program that caused a substantial proportion of denials.

On February 12, 2019, the DOE’s Office of Inspector General released a report that was highly critical of the conduct of the DOE’s Federal Student Aid office (“FSA office”), which oversees the DOE’s student loan programs, stating that, over a two-and-a-half year period through September of 2017, the FSA office had: (1) failed to use data that it had collected regarding loan servicer failure to meet proper standards; (2) continued to provide contractual opportunities to loan servicers that had engaged in controversial actions with regard to borrowers; and (3) had not responded to information suggesting that some loan servicers had miscalculated the amounts of borrower debt.²⁵ On

Data, *supra* note 5, although they have not come close to providing the very granular denial information requested by Congress. See Letter to Devos, *supra* note 18.

21. See March 31, 2020, PSLF Program Data, *supra* note 5.

22. GAO-18-547, *supra* note 16, at 14–15; see also Press Release, U.S. Dep’t of Educ., U.S. Dep’t of Educ. Announces Opportunity for Federal Student Loan Borrowers to be Reconsidered for Public Service Loan Forgiveness (May 23, 2018) (on file with author). These additional now-qualifying repayment plans include the Graduated Repayment Plan, the Extended Repayment Plan, the Consolidation Standard Repayment Plan, and the Consolidation Graduated Repayment Plan. *Id.*; see generally, *Temporary Expanded Public Service Loan Forgiveness*, FED. STUDENT AID, <https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/public-service/temporary-expanded-public-service-loan-forgiveness> [<https://perma.cc/TDJ3-XZWP>] (last visited Sept. 9, 2020). FedLoan, the PSLF program loan servicer, has also been designated by the DOE as the loan servicer for processing TEPSLF debt forgiveness applications. *Id.*

23. Aimee Picchi, *Student Loan Relief for Public Servants: 38,460 Applied, Only 262 Accepted*, CBS NEWS (Apr. 4, 2019, 5:00 AM), www.cbsnews.com/news/student-loan-relief-for-public-servants-many-apply-few-are-accepted/ [hereinafter Picchi].

24. March 31, 2020, PSLF Program Data, *supra* note 5; see also Picchi, *supra* note 23; Danielle Douglas-Gabriel, *Education Dept. Rejects Vast Majority of Applications to Loan Relief Program*, WASH. POST, Apr. 5, 2019, at A19.

25. U.S. DEP’T OF EDUC. OFFICE OF INSPECTOR GEN., ED-OIG/A05Q0008, FEDERAL STUDENT AID: ADDITIONAL ACTIONS NEEDED TO MITIGATE THE RISK OF SERVICER

April 3, 2019, several prominent Democratic Senators wrote to the Director of the Consumer Finance Protection Bureau (“CFPB”), Kathleen Kraninger, demanding more information regarding the CFPB’s oversight of the loan servicers that the DOE utilizes to manage its student loan portfolio, including FedLoan and the other eight loan servicer contractors.²⁶ Director Kraninger responded by letter on April 23, 2019,²⁷ stating somewhat surprisingly that the DOE’s loan servicers are now refusing to provide the CFPB with requested information necessary for supervisory examination purposes, and that the loan servicers have not refused to provide this information on their own initiative but instead have done so based on guidance provided to those servicers by the DOE, guidance purportedly based on borrower privacy concerns.²⁸ As far as I am aware, the DOE has not yet responded to this CFPB allegation.

One would hope that the PSLF and TEPSLF program application denial determinations have all been reached in good faith and simply reflect a near-universal failure of the applicants to meet the statutory and regulatory program requirements, or to provide the requested information necessary to review their applications.²⁹ I suspect, however, that the situation is more complicated, problematic, and politicized than that. What I think we have here is an unfortunate “perfect storm” resulting from the combination of three factors: (1) a relatively technical set of statutory and regulatory PSLF program eligibility requirements that are apparently very difficult for borrowers to understand; (2) the prior (and probably continuing) imposition by the PSLF program loan servicer FedLoan, under DOE directive, of the restrictive “public service organization” and “primary purpose” employer limitations with regard to qualifying employers that is not to be found in the PSLF enabling statutes (and as I have noted, the latter restriction has been struck down in recent litigation as

NONCOMPLIANCE WITH REQUIREMENTS FOR SERVICING FEDERALLY HELD STUDENT LOANS, 2 (2019).

26. See Letter to Kathleen Kraninger, Dir. of Consumer Fin. Prot. Bureau (Apr. 3, 2019), <https://apps.npr.org/documents/document.html?id=5796108-Letter-to-CFPB-on-PSLF-Oversight> [http ADD PERMALINK].

27. See Letter to Elizabeth Warren, Senator (Apr. 23, 2019), <https://www.npr.org/documents/2019/may/042319-letter.pdf> [http ADD PERMALINK].

28. *Id.*; see also Chris Arnold, *CFPB Chief Says Education Department is Blocking Student Loan Oversight*, NPR (May 16, 2019, 5:00 AM), <https://www.npr.org/2019/05/16/723568597/cfpb-chief-says-education-department-is-blocking-student-loan-oversight> [https://perma.cc/KD42-9A4N]. Former CFPB student loan ombudsman, Seth Frotman, reacted strongly to Director Kraninger’s disclosure of loan servicer non-cooperation: “It’s actually quite remarkable... The head of the Consumer Financial Protection Bureau is telling the world that the secretary of education has put in place a series of policies that are obstructing federal law enforcement officials from standing up for the millions of Americans with student debt.” *Id.*

29. I concede that I may be somewhat naive in assuming such good faith on the part of the Trump Administration in implementing a pre-Trump Administration program that it does not favor and has repeatedly sought to terminate.

imposed in an “arbitrary and capricious” manner),³⁰ and (3) ineffective DOE outreach efforts to inform borrowers as to the PSLF and TEPSLF programs’ precise eligibility criteria, along with poor (if not virtually non-existent) oversight by the DOE of the activities the firms engaged in to provide loan servicing and inform borrowers of their repayment options in general, and of the complicated PSLF program requirements in particular.

If I am correct in my analysis, then one would expect the number of PSLF applications and their approval rates to each eventually rise significantly as the benefits of the PSLF program and the reasons for the ninety-nine percent denial rate become better publicized by the media. The publicization will hopefully bring the attractiveness of the program and its eligibility requirements into sharper focus for later potential applicants. Further, I expect the proportion of potential applicants who are ineligible for taking out the wrong kinds of federal loans or enrolling in the wrong kinds of repayment programs to decline steadily over time,³¹ except to the extent that future denials or potential PSLF applicant decisions not to apply are due to continuing application by FedLoan of the “public service organization” regulatory limitation or the judicially-invalidated “primary purpose of the employer” limitation that limits employer eligibility. In particular, each year an increasing proportion of outstanding student loans are the federal Direct Loans that are eligible for debt forgiveness under the PSLF

30. *See* ABA v. DOE, 370 F.Supp.3d 1, 10 (D.D.C. 2019).

31. Travis Hornsby, in two related substantial blog postings, has convincingly argued in some detail that the combination of the replacement of the FFELP loan program by Direct Loans in 2010, the availability of much more attractive income-based loan repayment programs after the adoption of the Income-Based Repayment program in 2007, and especially after the initiation of the Pay As You Earn program beginning in 2012, will lead to a far higher rate of PSLF application approvals for those persons graduating from now Direct Loan-financed undergraduate or graduate programs in 2014 or later, once they begin to meet the ten-year public service employment requirements in 2024 and afterwards. *Travis Hornsby, Episode 2: What is the PSLF Snowball?*, STUDENT LOAN PLANNER (Sept. 11, 2019), <https://www.studentloanplanner.com/podcast-what-is-pslf-snowball/> [<https://perma.cc/2RVU-UMDE>]; Travis Hornsby, *Why the PSLF Success Rate Will Hit Over 50% by 2024*, STUDENT LOAN PLANNER (Sept. 20, 2019), <https://www.studentloanplanner.com/pslf-snowball-effect/> [<https://perma.cc/F3HT-NKUZ>]; *see also* Preston Cooper, *Everyone Calm Down About Rejected Loan Forgiveness Applications*, FORBES (Sept. 25, 2018), www.forbes.com/sites/prestoncooper2/2018/09/25/everyone-calm-down-about-rejected-student-loan-forgiveness-applications/#19fc18237f6f [<https://perma.cc/6ZNH-VBPF>]. Preston Cooper in this short article has also offered this argument, noting especially that in 2007 when the PSLF program was adopted only twenty-one percent of the outstanding federal student loans were the Direct Loans which qualify for PSLF program debt forgiveness, a percentage now steadily increasing each year since the previously dominant FFELP program for government-guaranteed private loans was terminated in 2010. Cooper also notes that many borrowers who have a “gap” in their qualifying payment records for one reason or another, and who therefore had not yet made all of the required 120 qualifying monthly payments when they applied in late-2017 or 2018, will soon start becoming eligible in greater numbers as they make additional qualifying payments, and that borrowers will learn from the early denials and will increasingly make sure that they are enrolled in qualifying repayment plans, and will also make greater efforts to submit properly completed applications. *Id.*

program, rather than the federally guaranteed private loans formerly made under the now-discontinued Federal Family Education Loan Program (“FFELP program”),³² which are ineligible for PSLF program debt forgiveness and comprise the bulk of student lending prior to mid-2010 when the program was terminated.³³ Also, each year an increasing proportion of borrowers enroll in eligible income-based loan repayment programs. One would certainly expect a significant rise in approval rates over time for the new TEPSLF program as well, for the same reasons, except to the extent that the “public service organization” or “primary purpose of the employer” limitations are again applied by FedLoan as a basis for denials and a means of discouraging applications, particularly given that apparently a full three-quarters of the initial denials under this program were simply due to the applicants failing to first file and then be rejected for loan forgiveness under the PSLF program, a threshold problem that can easily be rectified by borrowers prior to refiling their applications.

Let me first discuss in more detail the statutory PSLF program eligibility requirements and the DOE’s regulatory interpretation thereof. I will then very briefly discuss the different eligibility requirements for the newer TEPSLF program. I will then turn to discuss, in relatively general terms, the inadequate DOE outreach and oversight efforts made to ensure that borrowers are adequately informed regarding the requirements for these programs, and that their loan accounts are properly managed by the loan servicers. Finally, I will offer my overall conclusions. I will not in this short article address any of the recent proposals that have been made to legislatively change the PSLF program, either to prospectively curtail it or to expand its eligibility or benefits,³⁴ since such proposals have very little, if any, prospect for adoption given the pervasive partisan Congressional gridlock, which as of March 2021 shows no sign of easing anytime soon.

I. THE PSLF PROGRAM ELIGIBILITY REQUIREMENTS

For a student loan borrower to be eligible for tax-free loan forgiveness under the PSLF program, several statutory requirements must be met.³⁵ First of all, the loans must be federal Direct Loans.³⁶ Private, government-guaranteed loans made under other federal student loans programs—such as the formerly popular FFELP program or the Federal Perkins Loan program—are eligible only if they are later consolidated into a Direct Consolidation Loan, but loan repayments

32. *Federal Family Education Loan (FFEL) Program*, OFFICE OF FED. STUDENT AID HOME, <https://www2.ed.gov/programs/ffel/index.html> [<https://perma.cc/N6G7-WZWC>] (last visited Sept. 15, 2020).

33. *Id.*

34. Crespi, *supra* note 2, at 629, 633; What You Can Do For Your Country Act, H.R. 2441, 116th Cong. (2019).

35. See PSLF Application for Forgiveness, *supra* note 1.

36. *Id.*

made on those consolidated loans will not begin to qualify towards the 120 monthly payments required for debt forgiveness until after the consolidation.³⁷ The consolidation of formerly ineligible loans therefore starts a new required 10-year period for making qualifying repayments, with this postponement significantly reducing—if not completely eliminating—the benefits of eventual debt forgiveness for many borrowers.³⁸

Second, to be eligible for debt forgiveness borrowers must enroll in and make regular loan repayments under one or another of the Direct Loan repayment programs, which include the 10-year Standard Repayment Plan and several different income-based repayment plans.³⁹ Certain other widely used federal student loan repayment plans, such as the Graduated Repayment Plan or the Extended Repayment Plan, do not qualify (although payments made under those other plans may now qualify under the TEPSLF program).⁴⁰

Third, the 120 monthly payments must be made while the borrower is working full-time⁴¹ in a “public service job” after October 1, 2007, and the borrower must be so employed when applying for debt forgiveness.⁴² The criteria for employment to qualify as a “public service job” are set forth by statute⁴³ and in the implementing DOE regulations,⁴⁴ but the proper scope of that statutory phrase is open to dispute and has arguably been mischaracterized

37. *Public Service Loan Forgiveness (PSLF)*, FED. STUDENT AID, <https://studentaid.gov/manage-loans/forgiveness-cancellation/public-service> [<https://perma.cc/EM2L-EAGQ>] (last visited Sept. 18, 2020) [hereinafter *Public Service Loan Forgiveness (PSLF)*].

38. *Id.*

39. If a borrower is operating under the 10-Year Standard Repayment Plan, however, then they will have fully paid off their loans by the end of the 10-year period, thus mooted the question of debt forgiveness. The relevant income-based repayment plans that may lead to there being outstanding debt remaining after 10 years that may qualify for debt forgiveness under the PSLF program are the now rarely-used Income-Contingent Repayment Plan, and several far more popular choices: the Income-Based Repayment Plan, the Pay As You Earn Plan, and the Revised Pay As You Earn Plan. *Public Service Loan Forgiveness (PSLF)*, *supra* note 37. Under the Coronavirus Aid, Relief and Economic Security Act, signed into law on March 27, 2020, the requirement for borrowers to make payments on federal student loans is automatically suspended from March 13 through September 30, 2020, and during that time period interest will not accrue on those loans. Each suspended payment will still be regarded, however, as a qualifying payment for PSLF program purposes. *Coronavirus and Forbearance Info For Students, Borrowers, and Parents*, FED. STUDENT AID, <https://studentaid.gov/announcements-events/coronavirus> [<https://perma.cc/DVU7-PKU3>] (last visited Oct. 4, 2020).

40. *Public Service Loan Forgiveness (PSLF)*, *supra* note 37.

41. See 20 U.S.C. § 1087e; *Public Service Loan Forgiveness (PSLF)*, *supra* note 37. This is defined as at least 30 hours/week. 20 U.S.C. § 1087e; *Public Service Loan Forgiveness (PSLF)*, *supra* note 37.

42. Alexandra Hegji, *The Public Service Loan Forgiveness Program: Selected Issues*, CONGRESSIONAL RESEARCH SERVICE (Oct. 29, 2018), <https://crsreports.congress.gov/product/pdf/R/R45389> [<https://perma.cc/QFS7-8TMY>].

43. 20 U.S.C. § 1087e(m)(3)(B) (2018).

44. 34 C.F.R. § 685.219 (2008).

by the DOE, both in its regulations and with its “primary purpose of the employer” gloss on those regulations.⁴⁵ The payments need not be consecutive;

45. The DOE’s regulations implementing the PSLF program with regard to qualifying employment are on their face not consistent with the statutory criteria but are simultaneously both under-inclusive and overbroad. The regulations define a new term—“public service organization”—that is not referenced at all in the statutory eligibility criteria, and the regulations then require employment by such an organization for the employment to qualify as a public service job, regardless of the employee’s job duties. That definition is very restrictive and serves as a basis for eliminating eligible employers. For example, all for-profit organizations, partisan political organizations, and labor unions are eliminated, even when they employ persons to provide public services: “Is your employer a not-for-profit organization that is not tax exempt under Section 501(c)(3) of the Internal Revenue Code? . . . No—Your employer does not qualify.” PSLF Application for Forgiveness, *supra* note 1, at Section 3, Question 11; PSLF Employment Certification Form, *supra* note 11, at Section 3 Question 11. “Is your employer a partisan political organization or a labor union? . . . Yes—Your employer does not qualify.” PSLF Application for Forgiveness, *supra* note 1, at Section 3, Question 12; PSLF Employment Certification Form, *supra* note 11, at Section 3, Question 12.

This interpretation of the governing statute as limiting the class of qualifying non-governmental and non-501(c)(3) employers, rather than as focusing solely on the nature of the employment undertaken for such employers, appears very strained in light of the statutory text, and this issue has not yet to my knowledge been litigated. The DOE claimed that when it issued its 2008 regulations implementing the PSLF program that “the definition of ‘public service organization’ is derived from the statutory definition of ‘public service job’ in section 455(m)(3)(B) of the HEA.” 73 Fed. Reg. 63, 232 (Oct. 23, 2008). However, this attempt to ground this regulation in the statutory text is untenable because the statute refers only to types of employment and not to types of employers, with the exception of governments and IRS Code section 501(c)(3) organizations. The DOE also claims that the definition of a public service organization “is intended to identify broad categories of eligible jobs rather than define specific jobs under those categories.” *Id.*; However, that definition does not identify the nature of either categories of jobs or specific jobs, but instead only limits who can be an employer that provides qualifying public service jobs, and as I have noted does so in a manner inconsistent with the governing statute that does not impose any such limits on employers. *See generally* Gregory Crespi, *The Public Service Loan Forgiveness Program: The Need for Better Employment Eligibility Regulations*, 66 BUFF. L. REV. 819, 833–42 (2018).

Second, the DOE has attempted to argue that its regulations also properly embody a further limitation on qualifying non-governmental and non-501(c)(3) employers that their “primary purpose” must be providing public services, although there is no explicit reference to such a limitation in either the statute or the implementing regulations, and this limitation has been struck down in federal court as “arbitrary and capricious” in the absence of meeting the Administrative Procedures Act’s requirements for a reasoned decision making process supporting that result. *See* ABA v. DOE., 370 F.Supp.3d 1, 17 (D.D.C. 2019). Despite that adverse court ruling, both the DOE’s PSLF Employment Certification Form and its PSLF Application for Forgiveness each still explicitly incorporate a “primary purpose of the employer” limitation. *See* PSLF Employment Certification Form, *supra* note 11 at Section 3, Question 13; *see also* PSLF Application for Forgiveness, *supra* note 1 at Section 3, Question 13.

I suspect that the DOE with its “public service organization” regulation and their “primary purpose of the employer” gloss on that regulation has not been specifically trying to limit borrower eligibility, although this is definitely a possibility given the unsuccessful efforts by both the Obama and Trump Administrations to statutorily curtail PSLF program eligibility. I believe, however, that

“gaps” in making qualified payments due to changing employers or for other reasons are permitted, so long as a total of 120 qualified monthly payments are made, although no payments made while borrowers are either in deferment or in forbearance status will qualify.⁴⁶ As I have previously noted, the DOE has made available a PSLF Employment Certification Form since 2012, which allows (but does not require) borrowers to submit annually to FedLoan to have their current employment certified as qualifying.⁴⁷

Even given these rather technical and confusing program eligibility criteria, one would not expect to see such a bizarrely high ninety-eight percent plus application denial rate.⁴⁸ How could this happen? In my opinion there are a number of contributing factors.

First of all, one likely reason for many of the denials is that when the PSLF program was first adopted in 2007 only twenty-one percent of the outstanding federal student loans were Direct Loans,⁴⁹ and this percentage did not start to significantly increase until the FFELP program was discontinued in mid-2010 and was replaced by the subsequent issuance of Direct Loans to new borrowers. A significant, but not overwhelming, proportion of the persons seeking debt forgiveness under the PSLF program that were denied have been denied because their loans are not the federal Direct Loans to which the program is limited.⁵⁰ Many borrowers working in public service jobs since 2007 or later, and now having completed 10 years of qualifying employment, probably did not realize when they filed their PSLF applications that their FFELP or Perkins program loans were ineligible and had to be first consolidated into an eligible Direct Consolidation Loan before the required 10-year period of qualifying employment could even begin. In addition, some commentators have noted that: (1) the loan servicers may in some instances have a financial incentive not to provide FFELP borrowers with correct information regarding the PSLF program criteria, since that information might then encourage borrowers to consolidate

the DOE has instead primarily been trying to avoid the substantial administrative burden of having to determine on an individual employee case-by-case basis for perhaps many thousands of employees of such non-governmental and non-501(c)(3) or employers whether the employee’s duties qualify as a public service job. These regulatory measures taken together do substitute a much more manageable organization-level determination of the eligibility of their employers for PSLF applicants for the much more difficult individual job duty-based assessments. But it is not at all clear that mere administrative convenience concerns justify such a significant departure from and narrowing of the statutory job duty-based eligibility criteria. For more discussion of these interpretive questions, see generally Gregory Crespi, *The Public Service Loan Forgiveness Program: The Need for Better Employment Eligibility Regulations*, 66 BUFF. L. REV. 819 (2018).

46. Public Service Loan Forgiveness (PSLF), *supra* note 37.

47. See PSLF Employment Certification Form, *supra* note 11.

48. Travis Hornsby, *supra* note 31.

49. See Travis Hornsby, *supra* note 31; Preston Cooper, *supra* note 31.

50. See March 31, 2020, PSLF Program Data, *supra* note 5 (noting that fourteen percent of the PSLF application denials were because of “No Eligible Loans”).

their non-qualifying FFELP loans managed by those servicers into qualifying Consolidated Direct Loans to the financial disadvantage of the FFELP lenders (and to loan servicers other than FedLoan who would thereby lose a customer and revenue); and that (2) the DOE has not exercised sufficient oversight over the loan servicers to prevent such opportunistic behavior.⁵¹

Borrowers with ineligible loans can take steps to rectify this problem through consolidating their loans into a new Consolidated Direct Loan. Unfortunately, such efforts will be effective only to the limited extent that after consolidation they will have to now commence an additional 10-year period of qualifying employment before they are eligible for tax-free debt forgiveness, significantly reducing or even eliminating the benefits of the PSLF program for many borrowers. The new TEPSLF program does not address this difficulty for borrowers that seek debt forgiveness that stems from having ineligible loans, but only provides relief for borrowers who have eligible Direct Loans but who have chosen an ineligible repayment plan.

It is also clear that a significant proportion of PSLF program applicants were denied debt forgiveness because they had not enrolled in a qualifying repayment plan.⁵² Once informed of this problem, borrowers are free to change to a qualifying repayment plan. However, this action will then again only serve to start a new 10-year period of qualifying employment before debt forgiveness is available, giving no consideration to their prior qualifying public service employment, therefore reducing or even eliminating the benefits of eventual debt forgiveness.

Once again, commentators have noted that loan servicers often provide borrowers with incorrect information regarding the eligibility for the PSLF program and the various repayment options, as well as often fail to process in a timely manner the annual borrower certifications of income required for the various income-based repayment plans.⁵³ Delaying certification can lead to a borrower being placed in forbearance and then having perhaps several of their

51. “The companies that own and service older FFELP loans have a financial disincentive that discourages these companies from providing adequate and actionable information to borrowers trying [to] get on track for PSLF. Specifically, once a borrower is advised of her right to pursue PSLF and takes action to get on track, the borrower would have to immediately consolidate her loan—costing the lender future interest revenue and costing the loan servicer a customer. Borrowers often describe being led astray by their FFELP servicers.” *Keeping the Promise of Public Service Loan Forgiveness*, STUDENT BORROWER PROT. CTR. (Dec. 19, 2018), at 11, <https://protectborrowers.org/wp-content/uploads/2018/12/SBPC-AFT-PSLF-Investigation.pdf> [https://perma.cc/9YGG-PLRW] [hereinafter *Keeping the Promise*].

52. See March 31, 2020, PSLF Program Data, *supra* note 5 (noting that fifty-nine percent of PSLF applications denied were due to insufficient “Qualifying Payments,” although not making clear whether this category only referred to applicants who had enrolled in the wrong repayment plan, or also included applicants who were enrolled in a qualifying repayment plan but who had not made all of the required 120 monthly payments).

53. *Keeping the Promise*, *supra* note 51, at 12, 14.

subsequent payments no longer qualifying towards the required 120 monthly payments for PSLF relief until the certification problem is resolved.⁵⁴ This particular difficulty is the focus of the TEPSLF program, which expands debt forgiveness eligibility to borrowers otherwise qualifying for PSLF program debt forgiveness except for their unwise initial choice of a non-qualifying repayment plan.⁵⁵

Some substantial proportion of the PSLF application denials are surely due to the fact that the applicants have not completed ten years of qualifying public service employment and made all of their required loan repayments during that time period. Approximately one-third of the annual employment certification requests are denied by FedLoan,⁵⁶ which suggests that many borrowers who do not regularly request such annual certifications and who rely instead on the broad statutory specification of an eligible public service job may be incorrect in their belief that all ten years of their employment that they later submit for FedLoan review will be regarded as qualifying as public service work. After looking at both the PSLF Employment Certification Form and the two-page PSLF Application for Forgiveness form, what immediately jumps out in this regard are Section 3, Questions 11 and 12 in each form that together declare that for-profit employers, labor unions, and partisan political organizations cannot provide qualifying employment. Additionally, the question posed at Section 3, Question 13 of each form also stood out, which indicates that the DOE is apparently still imposing through FedLoan a “primary purpose of the employer” limitation regarding which non-governmental and non-501(c)(3) employers would qualify to offer public service jobs,⁵⁷ entirely separate from the nature of the work that an employee’s job requires, which is the sole focus of the statutory eligibility criteria for non-governmental and non-501(c)(3) organization employees. But as I have discussed, the exclusion of for-profit employers, labor unions, and partisan political organizations as qualifying employers is a very dubious

54. *Id.* at 65–66.

55. *Temporary Expanded Public Service Loan Forgiveness*, DEP’T OF EDUC., <https://studentaidwe.ed.gov/sa/repay-loans/forgiveness-cancellation/public-service/temporary-expanded-public-service-loan-forgiveness> [<https://perma.cc/9CVW-STVU>] (last visited Sept. 17, 2020).

56. See March 31, 2020, PSLF Program Data, *supra* note 5.

57. “Is your employer a not-for-profit organization that is not tax-exempt under Section 501(c)(3) of the Internal Revenue Code? . . . No—Your employer does not qualify.” PSLF Application for Forgiveness, *supra* note 1, at Section 3, Question 11; PSLF Employment Certification Form, *supra* note 11, at Section 3, Question 11. “Is your employer a partisan political organization or a labor union? . . . Yes—Your employer does not qualify.” PSLF Application for Forgiveness, *supra* note 1, at Section 3, Question 12; PSLF Employment Certification Form, *supra* note 11, at Section 3, Question 12. “Which of the following services does your employer provide? . . . [a list of 13 services follows, along with a ‘none of the above’ option] . . . Check all that apply and then continue to Section 4. If you check ‘None of the above’, do not submit this form.” PSLF Application for Forgiveness, *supra* note 1, at Section 3, Question 13; PSLF Employment Certification Form, *supra* note 11, at Section 3, Question 13.

reading of the governing statute, and no such “primary purpose of the employer” limitation regarding which employers may provide public service jobs appears in either the relevant statutes or in the implementing DOE regulations,⁵⁸ and that latter limitation has recently been struck down in federal court as “arbitrary and capricious.”⁵⁹ This all suggests that some proportion of these prior 2017 and 2018 denials (and probably also denials since issued in 2019 or 2020) are incorrect, although this is apparently a relatively small proportion if the DOE is to be believed.⁶⁰ And again, it is unclear how many additional borrowers may have met the statutory PSLF criteria for debt forgiveness, chose not to file an application because they first reviewed the application form, and reasonably concluded that their application would be denied simply because they were employed by a for-profit firm or labor union or partisan political organization, or that their employer’s primary purpose was not providing public service.

Finally, approximately twenty-three percent of the PSLF applications were denied due to missing information.⁶¹ The DOE has not publicly broken down the nature and proportions of the various information gaps meriting denials, but looking at the rather straightforward two-page application form, it would appear that the most likely application deficiencies would be with regard to the Section 3 information that must be provided with regard to each employer over the 10-year period regarding the specific periods of employment and the character of the activities of that employer (including Question 13, as to the employer’s “primary purpose”).⁶²

II. THE TEPSLF PROGRAM ELIGIBILITY REQUIREMENTS

The TEPSLF program requirements for debt forgiveness differ in only two regards from the requirements of the PSLF program. First, the TEPSLF program removes the requirement that the borrower must have enrolled in either the 10-year Standard Repayment Plan or an Income-Based repayment Plan and also allows persons who have enrolled in certain other repayment plans to seek debt forgiveness.⁶³ That change in repayment plan eligibility was the sole purpose for creation of the TEPSLF program, and that program consequently leaves in

58. See generally Crespi, *supra* note 45, at 842 (regarding inconsistencies between the statutory eligibility criteria and the DOE implementing regulations and the “primary purpose of the employer” criterion).

59. See *ABA v. DOE*, 370 F.Supp.3d 1, 10 (D.D.C. 2019).

60. See March 31, 2020, PSLF Program Data, *supra* note 5.

61. *Id.*

62. See generally Crespi, *supra* note 45, at 842 (regarding inconsistencies between the statutory eligibility criteria and the DOE implementing regulations and other interpretations).

63. *Temporary Expanded Public Service Loan Forgiveness*, *supra* note 55. These additional qualifying repayment plans include the Graduated Repayment Plan, the Extended Repayment Plan, the Consolidation Standard Repayment Plan, and the Consolidation Graduated Repayment Plan. *Id.*

force the other PSLF program requirements.⁶⁴ Second, unlike for the PSLF program which creates an entitlement to debt forgiveness for qualifying applicants, there has been only a specific amount of funding allotted to the TEPSLF program—initially \$350 million and now \$700 million—and once that funding is exhausted, no more applicants will be provided debt forgiveness under that program unless additional funds are allocated by Congress.⁶⁵

Unlike the PSLF program, the DOE has not yet provided borrowers with a specific form to file for relief under the TEPSLF program. What borrowers are now advised to do, after first filing a PSLF program application and being rejected, is to then send an appropriate email to the DOE requesting reconsideration of their application under the TEPSLF program, a request to be processed by FedLoan.⁶⁶

III. DEPARTMENT OF EDUCATION OUTREACH AND OVERSIGHT EFFORTS

The efforts by the DOE over the years to reach out and inform prospective applicants as to the requirements of the PSLF or TEPSLF programs, and to exercise oversight over its PSLF and TEPSLF program loan servicer FedLoan in the evaluation of Employment Certification requests and Applications for Forgiveness, and to more generally ensure that borrowers are adequately informed as to their debt forgiveness options and requirements, have been harshly criticized by many informed commentators.

As one example, the Government Accountability Office, in a September 2018 report, found fault with the DOE for not providing key information to FedLoan and to borrowers.⁶⁷ In addition, the DOE's Office of Inspector General

64. *Id.*

65. Jacob Parish, *New Rules for Student Loan Forgiveness Program Might Help You*, ASHA WIRE LEADER LIVE (Nov. 5, 2019), <https://leader.pubs.asha.org/doi/10.1044/new-rules-for-student-loan-forgiveness-program-might-help-you/full> / [<https://perma.cc/TB6D-6H2W>]. As of March 31, 2020, a total of \$56.26 million had been spent to discharge debts under the TEPSLF program. March 31, 2020, PSLF Program Data, *supra* note 5.

66. According to personal finance advisor Robert Farrington, borrowers who have had their PSLF applications rejected but who believe they may qualify under the TEPSLF program should send an email to TEPSLF@myfedloan.org, with a subject line stating "TEPSLF Request," and then in the body of the email state "I request that the Education Department reconsider my eligibility for Public Service Loan Forgiveness," include the same name under which the initially denied PSLF application was filed, and also include one's date of birth in the MM/DD/YYYY format. Robert Farrington, *The Guide to Temporary Expanded Public Service Loan Forgiveness*, THE COLL. INVESTOR (Feb. 11, 2020), <https://thecollegeinvestor.com/24410/temporary-expanded-public-service-loan-forgiveness/> [<https://perma.cc/D87L-BC92>]; see also *Temporary Expanded Public Service Loan Forgiveness*, *supra* note 55.

67. "[The Department of] Education has used various outreach methods to inform borrowers about PSLF, but the large number of denied borrowers suggests that many are still confused by the program requirements. . . . [The Department of] Education provides piecemeal guidance and instructions to the PSLF servicer it contracts with to process certification requests and loan forgiveness applications. This information is fragmented across the servicing contract, contract

Report, that I have previously noted, covering the January 2015 through September 2017 time period, also offers the same strong criticisms, as well as several others.⁶⁸ And, a scathing report issued in December of 2018 by the Student Borrower Protection Center, a non-profit organization headed by Executive Director Seth Frotman, the former Student Loan Ombudsman for the CFPB, called for the DOE to release key data that would reveal in detail the precise reasons for the ninety-nine percent denial rate at that time for PSLF and TEPSLF applications, which the report argues in some considerable detail is largely due to DOE and loan servicer failures to properly inform borrowers as to program requirements, and to properly manage their loan accounts.⁶⁹ There have also been similar criticisms of the implementation of the PSLF program by DOE and FedLoan offered by a wide range of other law enforcement agencies,

updates, and hundreds of emails. As a result, PSLF servicer officials said their staff are sometimes unaware of important policy clarifications. Education officials said they plan to create a comprehensive PSLF servicing manual but have no timeline for doing so. . . .

[The Department of] Education has not provided the PSLF servicer and borrowers with a definitive source of information for determining which employers qualify a borrower for loan forgiveness, making it difficult for the servicer to determine whether certain employers qualify and for borrowers to make informed employment decisions. . . . [The Department of] Education does not ensure the PSLF servicer receives consistent information on borrowers' prior loan payments from the eight other federal loan servicers, which could increase the risk of miscounting qualifying payments. Borrowers also lack sufficiently detailed information to easily identify potential payment counting errors that could affect their eligibility for loan forgiveness. . . . These weaknesses are contrary to federal internal control standards for using and communicating quality information, creating uncertainty for borrowers and raising the risk that some may be improperly granted or denied loan forgiveness."

GAO-18-547, *supra* note 16, at 1.

68. See FEDERAL STUDENT AID: ADDITIONAL ACTIONS NEEDED TO MITIGATE THE RISK OF SERVICER NONCOMPLIANCE WITH REQUIREMENTS FOR SERVICING FEDERALLY HELD STUDENT LOANS, *supra* note 25, at 10, and the associated text.

69. "[The DOE] and its contracted loan servicers have never revealed key documents and data that show how and why these breakdowns [that lead to such high denial rates] occur. From [DOE's] guidance for implementation of the PSLF program, to servicers' data and execution of program requirements, to government audits documenting breakdowns in processes and technology, there exists evidence demonstrating the scope of harm to borrowers. But this critical information currently sits in the shadows, out of reach from public scrutiny.

And although millions of American workers are relying on the promise of PSLF, [the DOE] continues to shield the missteps of the student loan servicing industry at the expense of millions of dedicated public service workers." Keeping the Promise, *supra* note 51, at 4–5.

The DOE has responded to some modest extent to these demands for more information regarding PSLF and TEPSLF application denials.

See, e.g., March 31, 2020, PSLF Program Data, *supra* note 5.

government auditors, and non-profit organizations,⁷⁰ as well as asserted in various litigation contexts.⁷¹

The serious deficiencies of DOE's public information and borrower outreach efforts, and especially its excessively lax oversight of its loan servicers in general, and in particular of FedLoan's management of the PSLF and TEPSLF programs, are evident to all close observers and are well-documented. Those deficiencies have contributed significantly to the extremely high rejection rates of debt forgiveness applications under the PSLF and TEPSLF programs, as well as to many other difficulties encountered by student loan borrowers.

I will leave others (such as the authors of the several reports here cited) to suggest exactly what specific DOE actions would be most appropriate and effective to remedy these deficiencies. The new Biden Administration, as of March 2021, is in the process of putting into place new DOE leadership that surely will be much more sympathetic to student borrower concerns and less solicitous of loan servicer interests than was the Trump Administration and the former senior DOE officials. I think that it is clear beyond reasonable argument that better DOE oversight of loan servicer efforts to publicize and implement the PSLF and TEPSLF programs, whether that loan servicer remains FedLoan or is a newly engaged firm, along with better alignment of the employment eligibility criteria that are imposed with the applicable statutes, would together significantly increase the rate at which debt forgiveness applications filed under these programs would be approved. I am hopeful that such efforts will now be made by the new DOE leadership.

CONCLUSION

The current ninety-eight percent plus denial rate for loan forgiveness applications filed under the PSLF program and ninety-four percent plus denial rate for TEPSLF applications are each bizarrely high and demand explanation. These high denial rates appear to stem from the combination of: (1) a relatively technical set of statutory and regulatory PSLF program eligibility requirements

70. See, e.g., THE DEPARTMENT'S COMMUNICATION REGARDING THE COSTS OF INCOME-DRIVEN REPAYMENT PLANS AND LOAN FORGIVENESS PROGRAMS, U.S. DEPT. OF EDUC. OFFICE OF THE INSPECTOR GEN., ED-OIG/A09Q0003 (Jan. 31, 2018), <https://www2.ed.gov/about/offices/list/oig/auditreports/fy2018/a09q0003.pdf> [<https://perma.cc/7GMU-XPPE>]; *Staying on Track While Giving Back: The Cost of Student Loan Servicing Breakdowns for People Serving their Communities*, CONSUMER FIN. PROT. BUREAU (June 2017), https://files.consumerfinance.gov/f/documents/201706_cfpb_PSLF-midyear-report [ADD PERMA]; Press Release, Maura Healey, Mass. Att'y Gen., AG Healey Sues to Protect Public Service Loan Forgiveness (Aug. 23, 2017), <http://www.mass.gov/ago/news-and-updates/press-releases/2017/2017-08-23-pheaa-lawsuit.html> [<https://perma.cc/J82M-VEWP>]; *Student Loan Borrower Relief Hiding in Plain Sight*, THE CENTURY FOUND (July 21, 2016), <https://tcf.org/content/report/student-loan-borrower-relief-hiding-plain-sight/?agreed=1> [<https://perma.cc/ECU7-2KV5>].

71. E.g., *Daniel v. Navient Solutions, LLC*, 328 F.Supp.3d 1319, 1321–22 (M.D. Fla. 2018).

that are difficult for borrowers to understand; (2) the imposition by the PSLF program loan servicer FedLoan, under DOE directive, of a restrictive “public service organization” regulation and a judicially-invalidated “primary purpose of the employer” limitation on qualifying employers that are not to be found in the enabling PSLF statutes; and (3) ineffective DOE outreach efforts to inform borrowers as to the PSLF and TEPSLF programs’ precise eligibility criteria, along with totally inadequate oversight by DOE of the actions of its loan servicers, particularly of FedLoan, the firm engaged to provide PSLF and TEPSLF program loan servicing.

Both application volume and approval rates under each of these two generous loan forgiveness programs will surely eventually rise significantly over time if only because each year an increasingly large proportion of outstanding federal student loans (that will eventually approach 100%) are the Direct Loans which are eligible for forgiveness under these programs, and because each year a rapidly increasing proportion of borrowers enroll in eligible income-based loan repayment programs,⁷² and of course because the many application denials and the resulting publicity are likely to lead to better borrower understanding of the programs’ requirements. But both application rates and approval rates will likely rise somewhat more rapidly, and eventually to a higher steady-state level, if the DOE under the Biden Administration withdraws its judicially-invalidated “primary purpose of the employer” limitation regarding which non-governmental and non-501(c)(3) employers may offer qualifying “public service jobs.” Perhaps application and approval rates will also rise if the DOE discards its statutorily ungrounded “public service organizations” restriction of such employers which serves to eliminate for-profit firm, labor union, and partisan political organization employees from eligibility.⁷³ Most important of all, the DOE needs to finally get its act together to engage in more effective communications with borrowers as to these two programs’ requirements, and to engage in more effective management and oversight of all of its loan servicers. I am reasonably hopeful that the new DOE leadership under the Biden Administration will rise to this challenge.

72. See generally Crespi, *supra* note 2.

73. For more information on these statutory interpretation questions, see generally Crespi, *supra* note 45.